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IN THE
Supreme Court of the United States

OCTOBER TERM, 1955

AMERICAN AIRLINES, INC., *Petitioner*,

NORTH AMERICAN AIRLINES, INC., *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 410

AMERICAN AIRLINES, INC., *Petitioner*,

v.

NORTH AMERICAN AIRLINES, INC., *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

The respondent's brief in opposition advances two points.

Respondent's first point is that the lower court correctly determined that the Civil Aeronautics Board "was without jurisdiction" of this matter. In the discussion of this point, respondent frequently suggests by indirection that the court below reviewed the raw record and overturned the Board's findings of fact—

a suggestion completely at odds with the opinion. Nowhere in the opinion does it purport to reverse the Board's factual findings of widespread public confusion, inconvenience and annoyance caused by the similar trade names of two competing airlines.

Phrasing the argument in terms of lack of "jurisdiction" is confusing. Respondent's contention actually is that the Board's findings of fact fell short, as a matter of law, of disclosing an "unfair or deceptive practice or unfair method of competition" within the meaning of Section 411 of the Civil Aeronautics Act. The asserted shortcomings in the findings are set forth in respondent's brief in almost the identical language used by the lower court:

" . . . there was no evidence that respondent adopted its name with intent to deceive the public or trade upon the goodwill or business reputation of petitioner or that petitioner had been injured by respondent's operation; that respondent palmed itself off as petitioner; . . . that respondent's advertising intended to or did entice petitioner's passengers to fly on respondent" (Resp. Br., pp. 4-5; compare the lower court's opinion, App. to Pet., p. vi.)

It is the absence of these factors which led the lower court to invalidate the Board's order. It reached this conclusion by combining *Gratz*, *Raladam* and *Klesner* into a rule of law that public confusion from similar trade names cannot ground a section 411 order in the absence of fraud, intent to deceive or injury to a competitor. This, as the petition shows, is squarely in conflict with the rules established in other Circuits and misapplies this Court's own decisions.

That the lower court constructed such a rule of law is made clearer by respondent's own brief. That brief seeks to explain why the Board's order was held invalid by reference to some of the practices which occasioned amendment of section 411 to include ticket agents, practices which involved conventional fraud or deception. Resp. Br., pp. 5-7. That, says the respondent, is the lower court's "yardstick". *Id.*, p. 6. Such, indeed, is our point: the lower court's "yardstick" is precisely the rule of *Gratz*, which would require fraud or deliberate deception in the traditional sense.

The respondent also seems to argue that trade-name simulation cases inherently involve private rights rather than public interest, and that consequently the "court below" was clearly correct in holding that the Board has no jurisdiction over cases involving private rights in the field of trade marks." (Resp. Br., p. 9). The fact that this case involves the use of a trade-name, rather than some other form of advertising, cannot lessen the public's interest in being freed of confusion.

A private interest there may be also. In fact, this very respondent is a party to litigation decided, after this petition was filed, by the Court of Appeals for the Ninth Circuit wherein it was held that the use of the name North American Airlines was a deliberate infringement of the name of North American Aviation, Inc., an aircraft manufacturer, in violation of private rights established by the law of California. *North American Aircoach Systems, Inc., et al. v. North American Aviation, Inc.*, 107 U.S.P.Q. 68 (9th Cir., Sept. 28, 1955); petition for rehearing filed October 28, 1955.¹

¹ That decision does not moot this case—as is demonstrated by the respondent's failure to mention the decision. There the *deceit* reaches only the use of the term "North American" and not other

But private interests may be variously limited in terms of geographical extent, lack of injury, or otherwise—as in fact, this very respondent argues in its petition for rehearing in the Ninth Circuit. Whatever the scope of private interests under the common law of unfair competition or trade name infringement, section 411 of the Civil Aeronautics Act gives a carrier the right to bring before the Board an alleged unfair practice involving the use of a trade name—like any other advertising that may impose upon customers—and have that agency determine the matter from the standpoint of the public's interest. And where, as here, the agency, after full hearing, ~~extensive~~ review of the evidence, and elaborate findings, has found the public harmed, put to expense, and suffering all the annoyances and inconveniences disclosed by this record, it is contrary to the rules of other Circuits and the proper interpretation of this Court's own precedents for the Court of the District of Columbia Circuit to hold that the public can be protected only within the narrow circumscription of the discredited judicial views which, in the 1920's, imposed the *Gratz* dictum upon the Trade Commission Act.

Respectfully submitted,

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November 3, 1955.

combinations which would cause confusion with American Airlines; it does not involve the important questions under Section 411 of the Civil Aeronautics Act involved here; and it is still pending on rehearing.